

Chapter 6

Other Things You Should Know

Abandonment, Settlement, and Dismissal

At some point in the process we just described, the appellant may decide to abandon the appeal. If this happens before the record has been filed, the appellant should file a written abandonment or stipulation for abandonment at the **appeals section** of the superior court. The filing effects a dismissal of the appeal (see pages 6-5 and 6-6). (CRC rule 20(b).) If the clerk's transcript has not been completed, the portion of the deposit that has not been used should be refunded. (CRC rule 5(d).) If it is after the record has been filed, the appellant should file a written request or stipulation to dismiss in the Court of Appeal. (See pages 6-7 and 6-8.) At this stage, the court has the discretion to accept or deny the request. (CRC rule 20(c).)

If the parties are able to agree on a settlement of their differences, the appellant should immediately notify the court in writing that the matter has settled and request a dismissal of the appeal. (CRC rule 20(a)-(c).)

If at any time the *respondent* believes the appeal should be dismissed, the respondent should file a motion to dismiss. If the *Notice of Appeal* is late, or “untimely,” the court has no power to hear the appeal, and the case will be dismissed. If the ruling is not appealable, the court may dismiss or it may elect to hear the case as a writ. The court will exercise its discretion in considering other dismissal motions, and may deny such motions if the issues raised in the appeal are in the public interest.

Motions

When do you file a motion? If there are problems with the record, a need for more time to complete a task, a desire for preference or priority in getting the court to handle the case or any problem other than the failure to file a timely *Notice of Appeal*, you can file a motion or application asking the court to take care of the problem. (See, CRC rules 19, 41, 43.)¹

What kinds of motions are there? Any kind of request of the Court of Appeal (for example, for an extension of time) is made by motion or application. The most commonly used motion, known as a motion to augment, is to add missing or overlooked items to the record. (See, in “Record Problems” following Step 6c,

¹ CRC rule 41 covers “motions in the reviewing court,” and rule 43 deals with “applications on routine matters.” According to rule 43, routine matters cover extensions of time and “other matters of routine.” This court does not differentiate among motions, applications, and requests.

about items missing from the record.) A motion can also be used to vacate a dismissal that has been entered against you, to consolidate two cases, and so forth.

How is a motion prepared? The motion should be typewritten, with *Proof of Service* (see pages 6-9 through 6-11) on all counsel and self-represented parties, and an original and three copies filed with the Court of Appeal. (CRC rules 41(a), 44(b).) You need to tell the Court of Appeal why you are making the request (show “good cause”), provide additional information that might be relevant, and let the Court of Appeal know what it is you want it to do (such as grant preference in the Court of Appeal in the processing of your case based on a terminal illness, add to the record, take judicial notice, etc.). Along with the motion should be points and authorities to support the request and documentary evidence (declarations and exhibits) if it is needed to support your request. Points and authorities are just that: the points set out the argument you wish to make, and the authorities give the legal reasons that the motion should be granted or denied (see pages 6-21 and 6-22). At least one declaration should, under penalty of perjury, identify the facts surrounding the request, what you have done or attempted to do to take care of the problem, what you want the court to do, and why it is necessary (see pages 6-23 and 6-24). Where motions are defective, the court may deny the motion “without prejudice,” which means the applicant may correct whatever problems there are and refile the motion.

Any opposition to the motion should be filed within 10 days (15 days if the motion was served by mail) from the date of service. Most motions are not ruled on until the time to file the opposition has passed. If no opposition is filed, the motion is usually granted. Generally there is no hearing on a motion.

What is a motion to augment? A motion to augment the record is used when items are missing from the record on appeal (the clerk’s or reporter’s transcript). (See pages 6-12 through 6-20.)

If the superior court clerk or reporter failed to include something that was designated in your designation of record, you do not need to file a motion to augment. Instead, serve and file a notice to correct the record in the superior court, asking that the missing items be copied and sent to be added to the record. (CRC rule 12(b).) At the same time, you need to serve on the Court of Appeal and all parties copies of the notice to correct the record. The clerk or reporter must comply within 10 days. If the clerk or reporter does not, you then need to file a motion to augment. However, if you already have a copy of the document that the superior court clerk omitted, it may be faster and cheaper to file a motion to augment to which you just attach the document instead of filing a notice to correct the record.

If new material is to be added to the record because the appellant or respondent forgot to designate it or did not know at the time that it would be needed, a motion to augment must be filed with the Court of Appeal. Each item requested must be a part of the record that was before the superior court such as a document that was filed in the superior court, received in evidence, or lodged with the court or a

transcript of oral proceedings. An item that was “lodged” with the court (rather than being filed) was returned to the parties and thus is not physically in the superior court file or in the custody of the court. Any document or transcript that is available should be attached to the motion. The court, if it grants the motion, then augments its record with the documents or transcripts included with the motion. A *Motion to Augment Record on Appeal* with documents attached can be found on pages 6-12 through 6-14.

If copies are not available, the items must be identified as they are in a designation of the record so that the superior court can prepare the needed clerk’s and/or reporter’s transcripts. These added transcripts are called **“supplemental” clerk’s and/or reporter’s transcripts** if the motion is granted. (CRC rule 12.) A *Motion to Augment* where the documents must be copied by the superior court to prepare a supplemental clerk’s transcript can be found on pages 6-15 through 6-17. A *Motion to Augment Record on Appeal* with reporter’s transcript can be found on pages 6-18 through 6-20.

If you need to have a supplemental clerk’s and/or reporter’s transcript prepared, it will take some time. The superior court will prepare an estimate of the cost of preparing the supplements. After the estimate is paid, the superior court is usually given 30 days to actually prepare the materials. If your brief is due within this time, your motion to augment should include a request to extend the deadline for filing the brief to 30 days after the supplemental transcript is filed. The title of your document should be “Motion to Augment the Record and Application to Extend Time to File [Appellant’s Opening, or Respondent’s or Appellant’s Reply] Brief.”

What is a request for extension of time?² The parties may stipulate (agree) to extend the briefing time up to 60 days for each type of brief by filing one or more stipulations in the Court of Appeal before the brief is due. The stipulation must be signed by and served on all parties. (See pages 6-9 through 6-11.) Only one signature on the copy filed with the Court of Appeal needs to be an original. (See pages 6-25 through 6-27.)

If a party needs more than the 60 days already stipulated to, or if the opposing party refuses to stipulate to an extension, the party needing the extension must file an application for extension of time (see pages 6-28 through 6-30). The party seeking additional time must give reasons, also known as **“good cause,”** why that extension is needed. In addition, the applicant for an extension of time should explain either that (1) the applicant was unable to get the agreement of the other party to a stipulated extension or (2) the parties have already stipulated to the

² CRC rule 43 covers “applications on routine matters” including extensions of time and “other matters of routine.” This court makes no distinctions among motions, applications, and requests. Rule 15(b) specifically covers extensions of time for briefs.

maximum 60 days and the applicant now is seeking permission of the court for a further extension. (CRC Rule 15(b).)

An *Application for Extension of Time to File Brief* (pages 6-28 through 6-30) should include the current deadline for the brief or item, the length of the requested extension, any previous applications that have been granted or denied, and any notices that have been issued under CRC rule 17, in addition to a statement of good cause (the reason). (CRC rules 43, 45(c), 45.5.) You need to file with the court an original, *Proof of Service* of the request on all parties (see pages 6-9 through 6-11), and self-addressed, postage prepaid envelopes for mailing the order that grants or denies the application to all counsel and self-represented parties. In a civil case, a request for an extension of time must be served on any party represented by the attorney requesting the extension. Evidence of this need not include the client's address. (CRC rule 43, 45(f).)

Most often, applications for extension of time are ruled on without waiting for opposition. Thus, if you wish to oppose an application for extension of time, you must file the opposition (or call the clerk's office and let them know you will be filing an opposition) right away.

ABANDONMENT OF APPEAL (CIVIL CASE) INSTRUCTIONS

If you wish to abandon your civil appeal **BEFORE** the record is filed, you should file a written Abandonment of Appeal (Civil Case) form in the **Superior Court**.

Filling out the Abandonment of Appeal (Civil Case) form:

- (1) The Appellate District where your appeal is filed.
- (2) The Division number of the Appellate District where your appeal is filed.
- (3) Fill in the Court of Appeal case number here. If you do not know the Court of Appeal case number or one has not been assigned yet, leave this space blank.
- (4) Your name, mailing address, city, state, zip code and telephone number where you can be reached during the day.
- (5) The name of the appellant in the Court of Appeal case.
- (6) The name of the respondent in the Court of Appeal case.
- (7) The Superior Court case number.
- (8) Today's date.
- (9) Type or print your name.
- (10) Your signature.

File: Original with Superior Court
Provide an extra copy to be file-stamped for your file.
Serve: All counsel All self-represented parties

TO BE FILED IN THE SUPERIOR COURT

COURT OF APPEAL (1) _____ APPELLATE DISTRICT, DIVISION (2) _____	Court of Appeal Case Number (if recent) (3) _____
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) _____ (4) TELEPHONE NO. _____ FAX NO. (Optional) _____ E-MAIL ADDRESS (Optional) _____ ATTORNEY FOR (Name) _____	FOR COURT USE ONLY
APPELLANT: (5) _____ RESPONDENT: (6) _____	
ABANDONMENT OF APPEAL (CIVIL CASE)	Superior Court Case Number: (7) _____

The undersigned appellant hereby abandons the appeal in the above entitled action.

Date: (8) _____

(9)
(TYPE OR PRINT NAME)

▶ _____
(10)
(SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the superior court if the record has not yet been filed in the Court of Appeal. If the record has already been filed in the Court of Appeal, you cannot use this form; you must file a request for dismissal in the Court of Appeal.

REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE) INSTRUCTIONS

If you wish to abandon your civil appeal **AFTER** the record is filed, you should file a written Request for Dismissal of Appeal (Civil Case) form in the **Court of Appeal**. Dismissal of the appeal is discretionary with the Court of Appeal.

Filling out the Request for Dismissal of Appeal (Civil Case) form:

- (1) The Appellate District where your appeal is filed.
- (2) The Division number of the Appellate District where your appeal is filed.
- (3) Fill in the Court of Appeal case number here.
- (4) Your name, mailing address, city, state, zip code and telephone number where you can be reached during the day.
- (5) The name of the appellant in the Court of Appeal case.
- (6) The name of the respondent in the Court of Appeal case.
- (7) Today's date.
- (8) Type or print your name.
- (10) Your signature.

File: Original plus 3 copies with
Court of Appeal

Provide an extra copy to be file-stamped
for your file.

Serve: All counsel
All self-represented parties

TO BE FILED IN THE COURT OF APPEAL

COURT OF APPEAL, (1) APPELLATE DISTRICT, DIVISION (2)		Court of Appeal Case Number (if known): (3)
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): (4) TELEPHONE NO.: E-MAIL ADDRESS (optional): FAX NO. (optional): ATTORNEY FOR (name):		FOR COURT USE ONLY
APPELLANT: (5) RESPONDENT: (6)		
REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)		

The undersigned appellant hereby requests that the appeal in the above entitled action be dismissed.

Date: (7)

(8)

(TYPE OR PRINT NAME)



(9)

(SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the Court of Appeal if the record on appeal has already been filed in the Court of Appeal. If the record has not yet been filed in the Court of Appeal, you cannot use this form; you must file an abandonment of appeal in the superior court.

REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)

Cal. Rules of Court, Rule 25

**PROOF OF SERVICE
INSTRUCTIONS FOR SUPERIOR COURT
OR COURT OF APPEAL**

Each document you prepare must be served on all counsel and self-represented parties in your case. The document may be served by mail or hand-delivery by someone who is over the age of 18 and not a party to the appeal. **If the document is a brief, you must serve one copy on the Superior Court and five copies on the California Supreme Court as well as all counsel and self-represented parties.**

How to serve a document:

Make a copy of your document for each party you wish to serve. You may use the attached Proof of Service form and type or write legibly the information requested. The original Proof of Service must be attached to the document you are filing with the court and a copy of the Proof of Service must be attached to each copy of the document you serve on the parties.

Filling out the Proof of Service form:

- (1) The case name in Superior Court or Court of Appeal.
- (2) The Superior Court case number or the Court of Appeal case number.
- (3) Check whether service is by mail or in person.
- (4) Do nothing here, just read to make sure you are over 18 years of age and not a party to the action.
- (5) The home or business address of the person serving the documents.
- (6) Insert the name of the document being served.
- (7) Fill out if the service is by mail. (If not by mail then fill out number (8) below.)
 - a. Check if serving by mail. If service is in person go to number (8).
 - (1)(a) Check if deposited in U.S. mail in sealed envelope with proper prepaid postage. OR
 - (1)(b) Check if placed in location following normal business practices with which you are familiar. On the same day it was deposited in U.S. mail in a sealed envelope with proper prepaid postage.
 - (2)(a) State the full names of all the parties or their attorneys to whom documents are mailed.

(2)(b) State the full address of all the parties or their attorneys to whom the documents were mailed.

(2)(c) Insert date of mailing.

(2)(d) Insert city and state where envelope was mailed.

(8) Fill out if the service is in person. (If not in person then fill out number (7) above.)

b. If service is personal, check here.

(1) Name of the person you gave the documents to.

(2) Address where the person was served.

(3) Date the documents were delivered.

(4) Time the documents were delivered.

(9) Today's date.

(10) Print or type the name of the person actually serving the documents.

(11) The signature of the person who actually served the documents that the foregoing is true and correct.

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties.

CASE NAME: (1)	CASE NUMBER: (2)
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NOTICE: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. YOU MAY NOT PERFORM THE MAILING OR DELIVERY YOURSELF. You must have a person who is at least 18 years old complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the form and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

(3) ☐ Mail ☐ Personal Service

(4) 1. At the time of service I was at least 18 years of age and not a party to this legal action.

(5) 2. My residence or business address is (specify):

3. I mailed or personally delivered a copy of the (6) as follows (complete either a or b):

(7) a. ☐ Mail. I am a resident of or employed in the county where the mailing occurred.

(1) I enclosed a copy in an envelope and

(a) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(b) ☐ placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(2) The envelope was addressed and mailed as follows:

(a) Name of person served:

(b) Address on envelope:

(c) Date of mailing:

(d) Place of mailing (city and state):

(8) b. ☐ Personal delivery. I personally delivered a copy as follows:

(1) Name of person served:

(2) Address where delivered:

(3) Date delivered:

(4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: (9)

(10)
(TYPE OR PRINT NAME)



(11)
(SIGNATURE OF DECLARANT)

PROOF OF SERVICE

MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS ATTACHED) - INSTRUCTIONS

After the record on appeal is filed, you might discover there is something missing from the record that you think the court should consider when deciding your case. You may make a Motion to Augment Record on Appeal (Documents Attached). Attach the documents to your motion to augment that you want added to the record on appeal. The motion is filed in the Court of Appeal. You must file an original plus three copies of the motion, your points and authorities (pages 6-21 through 6-22) and your declaration (pages 6-23 through 6-24). You must serve your motion on all parties.

Filling out the Motion to Augment Record on Appeal (Documents Attached):

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "D0".
- (10) The Superior Court number from your Superior Court case.
- (11) Your name.
- (12) List the documents you are attaching, for example:
 1. Order dated August 20, 2004.
 2. Declaration of John Doe dated August 30, 2004.
- (13) State why you are requesting the item(s) be added. For example, forgot to list it in Notice Designating Record, just learned I need the item to support argument, etc.

(14) Today's date.

(15) Month and year.

(16) Your signature.

(17) Type or legibly print your name.

File: Original plus 3 copies with
Court of Appeal
The Memorandum of Points and
Authorities and Declaration are attached
to the Motion to Augment along with a
Proof of Service

Provide an extra copy to be file-stamped
for your file.

Serve: Superior Court
All counsel
All self-represented parties

(1)
(2)
(3)
(4)

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

D (9) _____.

(Superior Court No. (10) _____)

MOTION TO AUGMENT RECORD ON
APPEAL (DOCUMENTS ATTACHED)

Pursuant to Rule 12(a) of the California Rules of Court, I, (11) _____, request augmentation of the record on appeal to include documents in this case that were not included in the Clerk's Transcript. Copies of the documents to be added to the record are attached to this motion. Those documents are:

(12) _____

(13) _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California this (14) _____ day of (15) _____.

(16) _____
Signature

(17) _____
Type or Print Name

MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS REQUESTED) - INSTRUCTIONS

After the record on appeal is filed, you might discover there is something missing from the record that you think the court should consider when deciding your case. If you do not have copies of the documents you want to include, you may make a Motion to Augment Record on Appeal (Documents Requested). The motion with points and authorities (pages 6-21 through 6-22) and your declaration (pages 6-23 and 6-24) is filed in the Court of Appeal. You must file an original plus three copies. You must serve your motion on the Superior Court, all counsel and all self-represented parties. If the court grants your motion, the Superior Court clerk will give you an estimate of how much it will cost to copy the documents you list to be included in the record. You have five days from the date you are given the estimate to pay it in Superior Court. If you do not pay it, you will be placed in default.

Filling out the Motion to Augment Record on Appeal (Documents Requested):

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "D0".
- (10) The Superior Court number from your Superior Court case.
- (11) Your name.

(12) List the documents you are requesting, for example:

1. Order dated August 20, 2004.
2. Declaration of John Doe dated August 30, 2004.

(13) State why you are requesting the item(s) be added. For example, forgot to include it in Notice Designating Record, etc.

(14) Today's date.

(15) Month and year.

(16) Your signature.

(17) Type or legibly print your name.

File: Original plus 3 copies with
Court of Appeal
The Memorandum of Points and
Authorities and Declaration are attached to
the Motion to Augment along with a
Proof of Service

Provide an extra copy to be file-stamped
for your file.

Serve: Superior Court
All counsel
All self-represented parties

(1)
(2)
(3)
(4)

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

D(9) _____.

(Superior Court No. (10) _____)

MOTION TO AUGMENT RECORD ON
APPEAL (DOCUMENTS REQUESTED)

Pursuant to Rule 12(a) of the California Rules of Court, I, (11) _____,
request augmentation of the record on appeal to include documents in this case that were not
included in the Clerk's Transcript. Those documents are:

(12) _____

The reason I am requesting the items(s) is:

(13) _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California this (14) _____ day of (15) _____.

(16) _____
Signature

(17) _____
Type or Print Name

MOTION TO AUGMENT RECORD ON APPEAL WITH REPORTER'S TRANSCRIPT - INSTRUCTIONS

After the record on appeal is filed, you might discover there is a transcript of a proceeding missing from the record that you think the court should consider when deciding your case. You may make a Motion to Augment Record on Appeal With Reporter's Transcript. You must specify the date and approximate time of each proceeding you want transcribed. If you have the name of the court reporter, it would be helpful to include it. The motion with points and authorities (pages 6-21 and 6-22) and your declaration (pages 6-23 and 6-24) is filed in the Court of Appeal. You must file an original plus three copies. You must serve your motion on the Superior Court, all counsel and all self-represented parties. If the court grants your motion, you will have to pay for the reporter's transcript. The Superior Court clerk will give you an estimate of how much the transcript you are requesting will cost. You have five days from the date you are given the estimate to pay it in Superior Court. If you do not pay it, you will be placed in default.

Filling out the Motion to Augment Record on Appeal With Reporter's Transcript:

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "D0".
- (10) The Superior Court number from your Superior Court case.
- (11) Your name.

(12) List the proceedings, date, and time, and court reporters name, for example:

1. Hearing on June 15, 2004 from 9:00 a.m. to 11:30 a.m. Court reporter is John Doe.
2. Hearing on June 16, 2004, all day beginning at 9:00 a.m. Court reporter is Jane Doe.

(13) Write the reason you need to augment the record.

(14) Today's date.

(15) Month and year.

(16) Your signature.

(17) Type or legibly print your name.

File: Original plus 3 copies with Court of Appeal
The Memorandum of Points and Authorities and Declaration are attached to the Motion to Augment along with a Proof of Service

Provide an extra copy to be file-stamped for your file.

Serve: Superior Court
All counsel
All self-represented parties

(1)
(2)
(3)
(4)

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

D(9) _____.

(Superior Court No. (10) _____)

MOTION TO AUGMENT RECORD ON
APPEAL WITH REPORTER'S
TRANSCRIPT

Pursuant to Rule 12(a) of the California Rules of Court, I, (11) _____,
request augmentation of the record on appeal to include the reporter's transcript(s) listed below.

(12) _____

The reason I am requesting to augment the record is:

(13) _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California this (14) _____ day of (15) _____.

(16) _____

Signature

(17) _____

Type or Print Name

MEMORANDUM OF POINTS AND AUTHORITIES FOR MOTION TO AUGMENT - INSTRUCTIONS

A Memorandum of Points and Authorities in support of your motion to augment must be attached to the motion to augment. **[NOTE: This memorandum is only a sample. You should give your own reason in paragraph 2 and your own circumstances in paragraph 3 as to why you need to augment the record and why there is no prejudice.]**

Filling out the Memorandum of Points and Authorities Form:

- (1) Today's date.
- (2) Your signature.
- (3) Type or legibly print your name.

<p>File: Original plus 3 copies The Memorandum of Points and Authorities and Declaration are attached to the Motion to Augment along with a Proof of Service</p> <p>Provide an extra copy to be file-stamped for your file.</p> <p>Serve: Superior Court All counsel All self-represented parties</p>

MEMORANDUM OF POINTS AND AUTHORITIES

AUGMENTATION SHOULD BE ORDERED TO ALLOW APPELLANT TO RECEIVE FULL AND FAIR APPELLATE REVIEW

Rule 12(a) of California Rules of Court permits the augmentation of the appellate record and specifically under Rule 12(a)(1) allows a certified transcript or document not designated under Rule 4 to be augmented and permitted. It is well established that this rule is to be construed liberally. (*People v. Brooks* (1980) 26 Cal.3d 471, 484.)

The need for augmentation here is compelling. Appellant believes the court used the incorrect standard of review. The issue can only be reviewed on appeal if the reporter's transcript of the court's comments before ruling is part of the appellate record.

Not only is augmentation necessary, it will not prejudice any party. The augmentation request concerns documents which were all part of the record. Additionally, the augmentation will not cause a substantial delay in this appeal.

CONCLUSION

For the above reasons, this Court should order the record to be augmented on appeal by including the reporter's transcript or document(s) requested in this motion.

Dated: (1) _____

Respectfully Submitted,

(2) _____

Signature

(3) _____

Type or Print Name

DECLARATION IN SUPPORT OF MOTION TO AUGMENT - INSTRUCTIONS

A declaration in support of your motion to augment must be attached to the motion.
[NOTE: This declaration is only a sample. You should insert you own reasons in paragraphs 3 and 4 and add your own support for paragraph 6.]

Filling out the Declaration in Support of Motion to Augment form:

- (1) Your name.
- (2) The date of the hearing you want to augment.
- (3) The name of the Superior Court judge who presided at the hearing you want transcribed.
- (4) The date of the hearing you want to augment.
- (5) Today's date.
- (6) Month and year.
- (7) City where you signed the declaration.
- (8) Your signature.
- (9) Type or legibly print your name.

File: Original plus 3 copies
The Memorandum of Points and
Authorities and Declaration are attached
to the Motion to Augment along with a
Proof of Service

Provide an extra copy to be file-stamped
for your file.

Serve: Superior Court
All counsel
All self-represented parties

DECLARATION IN SUPPORT OF MOTION TO AUGMENT

I, (1) , declare and state as follows:

1. I am a self-represented litigant.
2. On (2) , I argued the matter before the Honorable (3) . The court reporter reported the matter.
3. I did not order the reporter's transcript of (4) , thinking it was unnecessary.
4. I believe the court used the incorrect standard of review. The court's comments before announcing its ruling are material to this issue. The transcript of that hearing is therefore a necessary element of the record on appeal.

If documents attached use 5 below:

5. Because the document(s) requested is attached to this motion, there will be no significant delay, and possibly no delay at all with this appeal.
6. I know of no prejudice to any party as a result of the granting of this motion.
7. This motion is made in good faith for the reasons set forth above and not for the purposes of delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this (5) day of (6) , at (7) ,
California.

(8) _____

Signature

(9) _____

Type or Print Name

STIPULATION TO EXTEND TIME TO FILE BRIEF - INSTRUCTIONS

The parties may stipulate to extend the briefing time for up to 60 days for each type of brief by filing one or more stipulations in the Court of Appeal **before** the brief is due. (CRC rule 15(b).) The stipulation must be signed by and served on all parties.

Filling out the Stipulation to Extend Time form:

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "D0".
- (10) The Superior Court number from your Superior Court case.
- (11) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant's reply.
- (12) The date which will be the *new* due for the brief.
- (13) Name of person or counsel *agreeing* to grant the extension.
- (14) Name of person or counsel *requesting* the extension.
- (15) Number of days you are requesting the time to be extended.
- (16) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant reply.

(17) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant reply.

(18) New due date of your brief.

(19) Today's date.

(20) Signature of the party filing the stipulation.

(21) Date opposing party signed stipulation.

(22) Signature of opposing party.

File: Original with Proof of Service on all
counsel and self-represented parties

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

(1)
(2)
(3)
(4)

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

D (9) _____.
(Superior Court No. (10) _____)
STIPULATION TO EXTEND TIME TO
FILE (11) _____,
BRIEF TO (12) _____.

The undersigned counsel of record of the respective parties in the above-entitled action hereby stipulate as follows:

1. (13) _____ has agreed to grant (14) _____ a
(15) _____ extension for filing its (16) _____ brief.

2. The parties agree that there will be no prejudice to either party as a result of this extension.

3. The parties agree that (17) _____ brief will now be due on
(18) _____.

Dated: (19) _____.

(20) _____
Signature of Party Filing Stipulation
(or counsel if represented)

Dated: (21) _____.

(22) _____
Signature of Opposing Party
(or counsel if represented)

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF - INSTRUCTIONS

If a party needs more than the 60 days already stipulated to, or if the opposing party refuses to stipulate to an extension, the party needing the extension must file an application for extension of time. The party seeking additional time must give reasons, also known as "**good cause,**" why that extension is needed. You need to file an original application accompanied by stamped-addressed envelopes and copies of the request for yourself and each party. You must serve a copy of your request on all parties before filing the application with the Court of Appeal.

Filling out the Application for Extension of Time to File Brief form:

- (1) The Appellate District where your appeal is filed.
- (2) The Division number of the Appellate District where your appeal is filed.
- (3) Fill in the Court of Appeal case number here.
- (4) Your name, mailing address, city, state, zip code and telephone number where you can be reached during the day.
- (5) The name of the appellant in the Court of Appeal case.
- (6) The name of the respondent in the Court of Appeal case.
- (7) Your name.
- (8) Check whether the extension is for appellant's opening brief, respondent's brief or appellant's reply brief and indicate the date the brief is due. Add the date you would like the brief to be due after the "be extended to (date)" language.
- (9) Check the box as to whether CRC rule 17 notice has been received.
- (10) Check whether there have been previous extensions. If earlier extensions were received, indicate how many were granted and the number of days briefing has already been extended.
- (11) Check why you are unable to file a stipulation.

(12) Give "**good cause**" for the extension by explaining why the extension is needed.

(13) Today's date.

(14) Type or print your name.

(15) Your signature.

File: Original with a Proof of Service on all counsel and self-represented parties (if you are an attorney, serve your client), together with copies and preaddressed, stamped envelopes for each party.

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

TO BE FILED IN THE COURT OF APPEAL

COURT OF APPEAL: (1) _____ APPELLATE DISTRICT, DIVISION (2) _____		Court of Appeal Case Number: (3) _____
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): _____ (4) TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		FOR COURT USE ONLY
APPELLANT: (5) RESPONDENT: (6)		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF		

1. I (name): (7) _____
request that the time to file
- (8) ☐ appellant's opening brief, which is now due on (date): _____
☐ respondent's brief, which is now due on (date): _____
☐ appellant's reply brief, which is now due on (date): _____
 be extended to (date): _____
- (9) 2. I ☐ have ☐ have not received a rule 17 notice.
- (10) 3. I have received
☐ no previous extensions to file this brief.
☐ (Number of extensions): _____ extensions totaling (number of days): _____
- (11) 4. I am unable to file a stipulation to an extension because
☐ the other party is unwilling to stipulate to an extension.
☐ other reason (please specify): _____
- (12) 5. The reason I need an extension to file this brief is (please specify): _____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: (13) _____

(14)
(TYPE OR PRINT NAME)

▶ _____
(15)
(SIGNATURE OF PARTY OR ATTORNEY)

**APPLICATION FOR EXTENSION
OF TIME TO FILE BRIEF**

Cal. Rules of Court, rule 15